

1907-008 Chancery Causes: G. C. Jessee to vs. Board of Supervisors of Lee County
Lee Co.

Litton, Orr, Bailey, Wilson, Cooper, McClure, Russell, Ely,
Richmond, Sewell

CA-Other

T-Government

Transportation

To the Hon. H. A. W. Skeen, Judge of the Circuit Court
for Lee County, Virginia.

Humbly complaining, your orators, G. C. Jessee, A. D.
Litton, J. I. Orr, W. M. Bailey and F. K. Wilson, citizens and tax
payers of Lee County, Virginia, and who sues for themselves and all
of the other tax payers of said county who are subjected to the
illegal taxes hereinafter complained of, would respectfully
represent and show unto the court; that, at the regular meeting
of the Board of Supervisors begun and held for said County at the
court-house thereof on Monday the 23rd day of July, 1906, made and
entered, among other orders the following, to-wit:

"It is ordered that the county levy of Lee county for
the year 1907, be, and the same is fixed at the sum of forty cents
on each one hundred dollars (\$100.00) of the assessed taxable prop-
erty of said county, and that the county road levy of Lee County for
the years 1907, be and the same is hereby fixed at the sum of
thirty cents on each one hundred dollars (\$100.00) of the assessed
taxable property of said county.

That the district road levy for the Rose Hill, White
Shoals, Jonesville, Rockey Station and Yocum Station Magisterial
Districts, each, for the year 1907, be and the same are hereby
fixed at the sum of thirty cents on each one hundred dollars (\$100.00
of the assessed taxable property of said district, #####".

And it is ordered that said levies be assessed by the
Commissioner of the Revenue of said County, and collected by the
Treasurer thereof. A copy of which entire order is herewith filed
marked "Exhibit A" and prayed to be read and treated as a part of
this bill.

At a subsequent meeting of said Board of Supervisors begun
and held at the courthouse of said county on Monday the 18th day of
March, 1907, the said board made and entered among other orders, the
following order, to-wit:

" The Board of Supervisors having under consideration the
advisability of erecting bridges across Powell's River in the county
of Lee, are of the opinion that the best interest of the county de-
mand the erection and construction of at least one bridge in each
of the following districts, to-wit, Yocum Station, Rockey Station,
Jonesville, and White Shoals, provided contracts can be made for the
construction of the said bridges within the present levy of 30 cts.
on each one hundred dollars worth of taxable property in said coun-
ty, road tax, and for the purpose of negotiating and making the
necessary contracts for the erection of said bridges, C.T.Duncan, J.
C. Noel, D.C.Sewell, and H. C. Joslyn and J.W.Orr are appointed

commissioners who shall negotiate for the erection and construction of said bridges, and when they have done so, they shall report the same to a future meeting of this board; and it is expressly provided that until the contracts are approved by the board they are not to be binding on the County.

And whereas, there is a disagreement as to the location of said bridges in any of the said districts, the Board of Supervisors will inspect and determine the location" A copy of

which order is herewith filed marked "Exhibit B" and prayed to be read and treated as a part hereof.

At the April meeting of said Board of Supervisors begun and held at the court-house of said county on Monday the 15th day of April 1907, among other orders the following was entered"

" The citizens of the County generally having been insistant for bridges over Powell's River and the Board of Supervisors having at its March meeting, 1907, decided and determined to build four bridges over said river, one in each, the White Shoals, Jonesville, Rockey Station and Yocum Station, Districts, and the Board having likewise been asked, requested and agreed upon as a committee of viewers to locate the particular fords or places at which to place said bridges where there was a dispute as to the location, and settle all dispute as to said location, and after having given due notice to the public generally went upon the ground, viewed the different places, inspected the same, the interest of the county in general, and having full discussion, and after hearing full discussion, from citizens and attorneys of citizens as to the best location, at the present session do hereby decide and determine to place and locate the bridge in the Yocum Station District at or near Hobb's Ford and the one in the Rockey Station District at or near the Shaver's Ford and it been suggested or claimed at bar that viewers are necessary, thereupon and for the purpose, do appoint L. M. Carmical, L. T. Hyatt, C. S. Cox, J. W. Sparks and Chas. Ball viewers, all resident free holders of the county, any three or more of whom may act, who, after being duly sworn, will go upon the grounds and locate said bridges, one at or near Hobb's Ford, and the other at or near Shaver's Ford, and the necessary alterations in the road to the approaches of said bridges. They will file a map or diagram with their report, and they shall report specially, the conveniences, and inconveniences that will result as well to individuals as the public; whether the said bridges and the road will be of such private convenience as to make it proper that they should be built, and opened and kept in order by the persons for whose convenience it is desired; whether any yard, orchard or garden will have to be taken; the name of the land owners on such change or alteration which of said land owners require compensation; what will be a just compensation for the land so taken; and for the damage to the residue of the tract, beyond the peculiar benefits to be derived in respect to such residue from the bridges, landings and road to be established, all other facts and circumstances in their opinion useful in enabling the Board to determine the expediency and cost of establishing the bridges and altering the roads and landings, and they shall file their report on or before May 15th, 1907, the date of the next meeting of this Board, with the clerk of this Board, And this motion or cause as well as in the case of the remaining bridges is continued to said next meeting."

A copy of which said order is herewith filed marked "Exhibit C", and prayed to be read and treated as a part hereof.

Your orators are advised and here assert that all and each one of the aforesaid orders are illegal and without lawful authority and consequently null and void, and should be so declared, and particularly is the first order wherein the county road levy was made at 30 cts upon each \$100.00 worth of assessed property of said County and the district road levy of 30 cts. upon each \$100.00 of assessed value of the property of said district illegal and beyond the jurisdiction and power of said Board of Supervisors. Your orators admit that said Board of Supervisors have the right to make a county and district road levy, but in making the same the total of the two levies shall not exceed 30 cts upon the \$100.00 until after the question had been submitted to the legal voters of said county and district. By an Act of the General Assembly of Virginia approved the 12th day of March, 1904 providing as follows under section 11 and 12 of said act, which said act relates to the establishment ~~of~~ the proper construction ~~and~~ of the public road and landings, for building and keeping in good repair all bridges, cause ways, and wharfs of the said county, of this State &c. Section 11 of said Act provides in part as follows: " The Board of Supervisors of each County shall annually levy along with the county levy, a road tax upon the property, real and personal, assessed for taxation in their county; that the taxes shall be not more than 40 cts upon each \$100.00 in value of such property, and the same shall be collected, accounted for, and paid out on the warrant of the board as if it were a county levy. #####"

Section twelve of said act reads as follows, to-wit:
 "The Board of Supervisors of each county shall annually levy a road tax upon the property, real and personal, assessed for taxation in the several Magisterial Districts of their county,

which shall be applied to the working, keeping in order, and repairing the public roads in such districts. Such tax shall be not more than 40 cts. upon each one hundred dollars in value of such property, and the same shall be collected, accounted for, and paid out on a warrant of the Board, as if it were a county levy, except that the fund collected from each magisterial district shall be kept separate by the county treasurer, and a different rate of tax may be prescribed for different districts in the same county. The amount collected in each district together with the amount apportioned to each district under the provisions of the preceeding section, shall be expended therein; provided, that when the Board of Supervisors decide to levy a tax under this and the preceeding section exceeding a total of thirty cents on the one hundred dollars' worth of property, then before such tax shall be levied the question as to such tax shall be submitted to the people of the county or district affected as to whether such tax shall be levied. #####"

At the time of the passage of the aforesaid Act of the General Assembly of Virginia, Lee County had a special road law, but by an act of the General Assembly of Virginia at its session in 1906, the said special road law of said county was repealed, and the said county then came under the provisions of the said Act approved March 12th, 1904.

And as the said levy of 30 cents on the one hundred dollars of assessed value of the taxable property of said county for county road purposes, and the levy of thirty cents upon the one hundred dollars of assessed value of property of each of the districts of said county was illegal because, exceeding a total of thirty cents upon the one hundred dollars of assessed value of the property of the said county and district, and it being illegal ~~xxx~~ the remaining two orders complained of are ~~therefor~~ null and void as your orators are informed and here allege.

Your orators are willing, ready and anxious to pay any and all taxes legally assessed against them, and are now willing to pay into the Treasury of said district, County and State, all the taxes assessed against them by the order entered on the 23rd day of July, 1906, and herein before referred to, as Exhibit A, with this bill, ~~except the~~ said county and district road tax levy and they are further willing to pay road taxes county and district, not exceeding a total of thirty cents upon the one hundred dollars but they are not willing to pay a county and district road tax aggregating in the total of sixty cents upon the one hundred dollars. And in order to avoid a multiplicity of suits and to and the Treasurer of said County restrain the said Board of Supervisors from levying and collecting an illegal tax against them and the other tax payers of said county, your orators are forced to appeal to a court of equity for a restraint of said levy.

The prayer, therefore, of your orators is, that the Board of Supervisors of Lee County, composed of the following members, D. C. Sewell, Chairman, and E. M. Cooper, A. K. McClure, E. M. Russell, and H. C. T. Richmond and A. M. Ely Treasurer of said County, be made parties to this bill, and that they be required to answer the same, but they need not do so under oath, that being expressly waived; that the said Board of Supervisors and the said A. M. Ely, Treasurer, be restrained inhibited and enjoined from collecting the aforesaid illegal county and district road tax; that proper process issue, and all proper orders be entered, and that all such other further and general relief be afforded your orators and the other tax payers of said county as in the premises may be just and right. And they will ever pray &c.

Virginia, Lee County, to-wit:

I, A. O. Brown a notary public in and for the county and state aforesaid, do certify that J. C. Noel, this day personally appeared before me in my said county and made oath that the facts stated in the foregoing bill so far as they depend upon his own knowledge are true, and so far as they depend upon information derived from other he believes them to be true.

Given under my hand this the _____ day of May, 1907.

A. O. Brown

A. O. Brown N.P.

G. C. Jones, et al.

27. } Bill in Chancery
Board of Supervisors

1907, 1st May Rules

Bill filed, Spc
executed & D.N.

" 2nd May Rules
taken 2nd Monday.

D.N. conf'd, & cause
set for hearing.

Costs:

Clerk \$6.31

Shff. 2.00

Att'y. 15.00
\$23.31

G. C. Jessee, A. D. Litton, J. J. Orr,

Plaintiffs.

W. M. Bailey and F. K. Wilson,

vs.

In Chancery

The Board of Supervisors of Lee County,

composed of the following members, D. C. Sewell Chairman, E. M.

Cooper, A. K. McClure, E. M. Russell and Defendants.

H. C. T. Richmond, and A. M. Ely Treasurer

of said County,

This cause came on to be heard upon the bill of the plaintiffs, and exhibits therewith, the demurrer of the defendants and joinder therein by the plaintiffs, and was argued by counsel.

On consideration thereof, it is adjudged, ordered and decreed that the said demurrer be and is hereby over ruled, and the

court being of the opinion that the said Board of Supervisors exceeded their authority in levying the sum of thirty cents on each One Hundred Dollars of assessed taxable property of said county for county road levy for the year 1907, and the sum of thirty cents on each One Hundred Dollars of assessed taxable property of the several districts of said county for district road levy for said year. ^{because said Board could not under the statute levy} It is adjudged, ordered and decreed that the said levy of thirty cents on the One Hundred Dollars of assessed taxable prop-

erty of said county for county road levy for the year 1907 be and the same is hereby set aside and annulled, and the said Board of Supervisors, and the said County Treasurer are hereby perpetually enjoined, restrained and inhibited from proceeding in any manner to collect the said County road levy for said year; but as to the said district road levy the same is held to be valid, and may be collected and applied in the manner prescribed by law. And it is further adjudged ordered and decreed that the plaintiffs recover against the defendants ^{the} costs of this suit to be taxed by the clerk. And the cause is stricken from the docket.

*assessed
thirty cents on the one hundred dollars of taxable property
for both purposes, without submitting the same to
a vote of the people as the statute requires.*

G. C. Jessel et al.
vs { Decree No. 1.
 Final.
Board of Supervisors et
 als.

Entered in C.O.B.
8, page 290

Enter this decree.
H C W Shaw
May 22nd 1907

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

The Board of Supervisors of Lee County, composed of the following members: D.C. Swine, Chairman, and E.M. Cooper, A.K. McClure, E.M. Russell, H.C. Richmond and A.M. Ely, Treasurer of said County

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on

the *1st* Monday in *May* 190*7*, to answer a bill in chancery exhibited against *them* by *G.E. Jesse, A.D. Litton, J.J. Orr, H.M. Bailey and F.K. Wilson*

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *2nd* day of *May* 190*7*, and 1 *31* year of the Commonwealth.

A Copy, Teste:

H.C.T. Ewing Clerk

_____, Clerk

G.C. Jessee, et al.,

VS

SUBPOENA
IN
CHANCERY

D.C. Sewell, Chm., et al.,

O. & N.

p. q.

To

1st May

Rules

Circuit

Court

1907

Executed by summoning
A. M. Ely and D. C. Sewell
who accept legal service
of the within writ.
May 4th 1907.

A. M. Ely.

D. C. Sewell